

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1771 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

JJ BHAVSAR

Versus

FOOD CORPORATION OF INDIA

Appearance:

MR JIVANLAL M PATEL for Petitioner
MR PM THAKKAR for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 23/02/2001

ORAL JUDGEMENT

This petition is filed on 4th September 1986 and is numbered as Spl. C.A. No. 1771 of 1987. With a view to see that as much old matters as are possible are disposed of, the Honourable the Chief Justice has, in the

last few Sittings, notified that all the Honourable Judges of this Court would sit in Single Bench on all Fridays and take up old final hearing matters. Accordingly, except in few urgent matters, all the Honourable Judges of this Court are sitting in Single Bench on all Fridays to achieve this goal. The Sittings are announced much earlier, and matters are also notified well in advance. It, therefore, becomes the moral responsibility of all Advocates concerned to give fillip to this endeavour so as to reduce the number of old cases pending for disposal. However, it is a sorry state of affair that when this matter is called out today, learned Advocate for the petitioner is not present before the Court. Therefore, this Court has no alternative but to dispose of this petition on merits.

The petitioner, at the relevant, was serving with the Food Corporation of India. By an order dated 2.7.1969 he was appointed as a messenger-cum-watchman. At the relevant time, he was working as Assistant Gr. III Godown. On 11.1.1985 a memo was issued. The statement of allegations was made against the petitioner interalia alleging that:

- (i). while working as Assistant Gr. III at FCI Sabarmati during December 1984 and January 1985, he had absented himself from duty without prior intimation to his superior officer.
- (ii). during the period he had trespassed with a stranger into the FCI godown with hockey sticks and other weapons like knife etc.
- (iii). he had assaulted one D.J. Waghela, an employee of FCI, who was on duty at the relevant time, with an intention to cause grievous injuries.

Thus, prima facie, it appears that the allegations against the petitioner was not only that he remained absent without prior permission, but also that he acted in an irresponsible manner and caused disturbance in the smooth running of the office and thereby violated the provisions of FCI (Staff) Regulations, 1971 (hereinafter referred to as the Regulations).

The petitioner submitted his reply to the statement of allegations and denied the allegations. He made grievances that he has not been supplied with copies of all the statements. Later on the copies were made available to him, and he thereafter submitted his reply again denying the allegations. It is alleged in the petition that thereafter, without holding departmental inquiry in accordance with the provisions of the

Regulations and contrary to the principles of natural justice, the Inquiry Officer recorded his findings on the basis of which the petitioner has been held guilty and has been suddenly and abruptly served with an order dated 6.5.1986 interalia stating that Senior Regional Manager, the respondent No.2 herein, had agreed with the findings recorded by the Inquiry Officer and has imposed a penalty of dismissal from service of the Corporation. The said order is produced on record at Annexure 'C'.

The petitioner challenged the said order by filing a writ petition before this Court being Special Civil Application No. 3006 of 1986. In view of the availability of alternative remedy, the Court directed the petitioner to file an appeal within a period of one week from the date of disposal of the petition, with a direction to the authorities to dispose of the same within a period of eight weeks from the receipt of the appeal memo. The petition was disposed of on 17.6.1986. It appears that thereafter the appellate authority considered the appeal which was preferred on 23.6.1986 and on a careful consideration of the appeal along with the relevant records of the case, the appellate authority was of the view that the departmental proceedings have been initiated against the appellant in accordance with the rules and Regulations, and there is no violation of principles of natural justice. The appellant was given opportunity to defend his case. The charges levelled against the appellant were of serious nature. The appellate authority negatived the contention that the disciplinary proceedings should not have been initiated when criminal case is pending against the appellant, in view of the fact that there is no legal bar to initiate the disciplinary proceedings under the Regulations. There was sufficient evidence on record to show that the documents were supplied to the appellant-petitioner along with the penalty order and the appellant-petitioner was deliberately avoiding receipt of the same, however, finally it could be handed over to him on 28.6.1986. The appellate authority also found that the contention raised to the effect that the delinquent was not supplied with the inquiry officers report and findings of the disciplinary authority are incorrect. Thus, on appreciation of evidence and legal submissions raised before the appellate authority, the appeal was dismissed.

Before this Court, it is required to be noted that this is a petition under Article 227 of the Constitution of India, wherein contentions raised in paragraph 5 of the petition are to the effect that without holding departmental inquiry in accordance with

the provisions of the Regulations, the findings arrived at cannot be accepted and that some complaint was filed before the Magistrate which was numbered as Inquiry Case No. 2 of 1985 which was ordered to be investigated by the Sabarmati Police under section 156 (3) of the Cr.P.C. by order dated 4.1.1985. Within a short period, the Police Inspector, Sabarmati filed 'A' Summary report whereupon notice was issued to the complainant. On 16.2.1985, the Court ordered to make an inquiry under section 202 of the Cr. P.C. and thereafter it was adjourned to 21.3.1985. On 14.5.1986, the Magistrate granted the 'A' Summary. Relying on this order at Annexure 'F', a contention is raised that if the petitioner had genuine grievance he would have appeared before the Court and would have given evidence. After taking cognizance, there was no question of granting 'A' Summary.

So far as disciplinary proceedings are concerned, it is required to be noted that one D.S. Ranade, Deputy Manager (Admn), FCI has filed affidavit in this matter. In paragraph 8 of the affidavit, it is pointed out that the departmental inquiry was in accordance with law. The Corporation has followed the Regulations and by following the principles of natural justice, inquiry was held from 6.8.1985 and was completed on 18.3.1986. During the course of the inquiry, witnesses who were listed in the charge sheet were examined. The petitioner was given an opportunity to cross-examine each of the prosecution witnesses but he refused to do so except cross examining the PW No.1. The proceedings were concluded on 18.3.1986. Based on the prosecution as well as defence evidence and the relevant record, the Inquiry Officer submitted his report of inquiry. The competent authority, after examining the same, agreed with the findings of the Inquiry Officer and arrived at a decision. Thus, there is no substance in the contention that the disciplinary proceedings were conducted without following the principles of natural justice and without giving an opportunity to the petitioner.

It is also proved that the petitioner absented himself from 31.12.1984 and 1.1.1985. This fact has also been established. There is no question of minor penalty only on this ground. The penalty is imposed also on the ground that though the petitioner absented himself, he trespassed with an associate with dangerous weapons and assaulted one staff member who was discharging his duties. This aspect has been taken into consideration by the authority. The petitioner, with a view to avoid the service of the order, submitted an application for

self-sickness. The District Manager could not serve the original order and copies of the document to the petitioner, and, therefore, a public notice was placed not only on the notice Board of the District Office at Rajkot but also printed in the Gujarati newspaper "Phoolchap" on 9.5.1986. Copy of the penalty order was also sent by Registered Post Acknowledgment Due on 8.5.1986 at two different residential addresses at Ahmedabad. One was accepted by the mother of the delinquent on 10.5.1986 and another on 12.5.1986 as per the postal acknowledgment receipt. It is thereafter that the petitioner approached the Corporation on 19.6.1986, when the original order of dismissal from service and the findings of the disciplinary authority along with the copy of the Inquiry Officer's report were supplied to him. The Corporation appointed a committee of three persons to serve the order of dismissal before publishing the advertisement in the newspaper. The house-owner was contacted who informed that the petitioner is not his tenant. It is thus pointed out that the petitioner has conducted himself in such a manner so as to avoid service of the dismissal order. If correct and proper address would have been given, the order could have been served.

The Corporation has also pointed out that reliance is placed on regulation No. 59/4 of the Staff Regulation 1971. However, it is substituted by notification No. 9-4-78-EP dated 5.1.1979 which became effective from 2.1.1979. The said regulation reads as under:

"If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clause (v) to (ix) of Regulation 54 should be imposed on the Corporation employee, it shall make an order imposing such penalty and it shall not be necessary to give the Corporation employee any opportunity of making representation of the penalty proposed to be imposed."

Thus, it is very clear that reasonable opportunity was given to the petitioner and the order has been passed in accordance with law. There is no substance in the petition, and the same is dismissed. Rule is discharged, with no order as to costs.

sd/-

csm./ (B.C. PATEL, J.)

